

The Secretary, United States Department of
Housing and Urban Development, on behalf of

HUD ALJ No. _____

FHEO Nos. 04-10-1694-8
04-10-1695-8
04-11-0012-8
04-11-0013-8
04-11-0014-8
04-11-0015-8
04-11-0017-8

Respondents.

I. JURISDICTION

¹ The Act, and its implementing regulations, uses the term "handicap." However the terms "handicap" and "disability" are interchangeable. The term "disability" will be used herein in place of the term "handicap."

The Act authorizes the issuance of a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has redelegated the authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director of Fair Housing and Equal Opportunity for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice occurred in this case and has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY AND FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaints and the Mixed Determination of Reasonable Cause and No Reasonable Cause, Respondents Miami Management, Boro, and Waterside HOA are charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter; a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person; or a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. Discrimination prohibited by 42 U.S.C. § 3604(f)(1) and 42 U.S.C. § 3604(f)(2) includes the refusal to make reasonable accommodations in the rules, policies, practices or services, when such accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
4. The Act defines disability as a physical or mental impairment which substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.21.

B. Parties and Subject Property

5. Complainants [REDACTED] are the owners of a single family home located at 16497 NW 15th Street, Pembroke Pines, FL 33028 ("subject property"). The subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
6. Complainants [REDACTED] leased the subject property to Complainant A Loving Heart. Complainant A Loving Heart is a Florida corporation and Complainants [REDACTED] are officers of Complainant A Loving Heart. Complainants [REDACTED] and A Loving Heart are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
7. Complainant A Loving Heart uses the subject property as a residence and leases individual rooms within the subject property to Complainants [REDACTED] collectively, "Resident Complainants"). Complainant A Loving Heart provides services to the Resident Complainants such as the preparation of meals, and daily administration of medication.
8. Complainant [REDACTED] has a developmental disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
9. Complainant [REDACTED] has an intellectual disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
10. Complainant [REDACTED] has an intellectual disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
11. Complainant [REDACTED] has a developmental disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
12. Complainant [REDACTED] has a developmental disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
13. Complainant [REDACTED] has an intellectual disability and is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
14. The subject property is located within the Waterside at Spring Valley subdivision ("Waterside Subdivision"). Respondent Waterside HOA provides services and regulates activity within Waterside Subdivision.
15. Respondent Waterside HOA is an association of homeowners overseen by an elected Board of Directors. Complainants [REDACTED] are members of Respondent Waterside HOA.

16. Respondent Miami Management is employed by Respondent Waterside HOA to manage the daily operations of Waterside Subdivision.
17. Respondent Boro is employed by Respondent Miami Management as the on-site manager of waterside Subdivision. Respondent Boro's duties include receiving and processing rental applications, fielding inquiries from homeowners, and issuing citations and other notices of violations.

C. Factual Allegations

18. The Resident Complainants have intellectual and/or developmental disabilities which substantially limit them in major life activities, including their ability to care for themselves.
19. In an email dated January 12, 2009, Complainant [REDACTED] contacted Respondent Boro and inquired if Respondent Waterside HOA's bylaws or rules prohibit the operation of the subject property as a residence for individuals with disabilities.
20. In an email dated January 14, 2009, Respondent Boro replied to Complainant [REDACTED] and advised that the Waterside at Spring Valley Declaration of Covenants and Restrictions ("Waterside Declaration") prohibits the operation of a residence for individuals with disabilities within Waterside Subdivision. Moreover, Respondent Boro advised that no more than one (1) family is permitted to simultaneously reside in a home.
21. Subsection 8.2 of the Waterside Declaration states that "[n]o Lot shall be used except for single family residential purposes, unless otherwise approved by the Developer." Subsection 8.20 of the Waterside Declaration states that "[n]o Lot or Home shall be occupied by any person other than the Owner(s) thereof and applicable Members' Permittees and in no event other than as a residence."
22. On or around February 3, 2009, the City of Pembroke Pines approved Complainant A Loving Heart's application to operate the subject property as a residence for individuals with disabilities.
23. In or around September 2009, Complainant [REDACTED] installed a fire suppression system on the exterior of the subject property, as required by the City of Pembroke Pines to use the subject property as a residence for individuals with disabilities.
24. On or around November 1, 2009, Complainant A Loving Heart received a Certificate of License from the Florida Agency for Persons with Disabilities to operate the subject property as a residence for individuals with disabilities. The Certificate of License has been renewed several times and is currently valid.
25. On or around December 13, 2009, Complainant [REDACTED] moved into the subject property as a resident.

26. On or around February 10, 2010, Complainant [REDACTED] moved into the subject property as a resident.
27. On or around April 5, 2010, Complainant [REDACTED] moved into the subject property as a resident.
28. On or around April 14, 2010, Complainant [REDACTED] moved into the subject property as a resident.
29. On or around April 26, 2010, Complainant [REDACTED] moved into the subject property as a resident.
30. On or around May 5, 2010, Complainant [REDACTED] moved into the subject property as a resident.
31. In a letter dated December 21, 2009, to Complainant [REDACTED] Respondent Waterside HOA, through its counsel, stated that Complainant [REDACTED] was in violation of several provisions of the Waterside Declaration. Respondent Waterside HOA asserted that the subject property was leased by Complainant [REDACTED] without prior approval and was being used for unauthorized commercial purposes. Respondent Waterside HOA also advised that a business may be operated in Waterside Subdivision only if it is "not apparent from the outside and there is no extra pedestrian or vehicular traffic in and out of the premises." Further, Respondent Waterside HOA asserted that the fire suppression system installed at the subject property was in violation of the Waterside Declaration because it was visible from the street and Complainant [REDACTED] failed to obtain approval before its installation.
32. The subject property is being used as a residence for individuals with disabilities. It does not generate any more traffic or noise than any other home in Waterside Subdivision. Employees and visitors of Complainant A Loving Heart park in the driveway or on the street in front of the subject property, which is a practice common among other residents in Waterside Subdivision. Additionally, traffic from deliveries and visits from medical personnel only occur on a monthly or bimonthly basis and are not excessive.
33. Complainant A Loving Heart and the Resident Complainants use the subject property as a single family residence, not a business. The Resident Complainants live in the subject property together as a family unit. They reside in the subject property full time, eat meals at the subject property, and enjoy recreational activities there.
34. In a letter dated January 7, 2010, Complainant [REDACTED], through his counsel, advised Respondent Waterside HOA that subsection 419.001(2) of the Florida Statutes permits the operation of a residence for individuals with disabilities within Waterside Subdivision. Moreover, Complainant [REDACTED] advised Respondent Waterside HOA that the subject property was a residence for individuals with

disabilities and that its operation was covered by several state and federal civil rights statutes.

35. Through the letter dated January 7, 2010, Complainant [REDACTED] made a request for a reasonable accommodation to Respondent Waterside HOA to operate the subject property as a residence for individuals with disabilities.
36. In a letter dated February 3, 2010 to Complainants [REDACTED] Respondent Boro advised that an unauthorized apparatus was installed on the exterior of the subject property in violation of the Waterside Declaration. Respondent Boro requested that the violation be cured within thirty (30) days upon receipt of the letter.
37. In an email dated February 10, 2010, to Respondent Boro, [REDACTED] stated that the apparatus installed at the subject property was a fire suppression system that was required by the City of Pembroke Pines for the safety of the individuals with disabilities who reside at the subject property. Complainant [REDACTED] also advised that the fire suppression system was installed behind a wooden fence and could not be seen from the street. Complainant [REDACTED] made a request for a reasonable accommodation to continue to use the fire suppression system.
38. In a letter dated March 31, 2010, to Respondent Waterside HOA, Complainant [REDACTED] again asked to be permitted to continue to operate the subject property as a residence for individuals with disabilities and to use the fire suppression system.
39. In or around April 2010, a one (1) page, unsigned, and undated notice was distributed to the residents of Waterside Subdivision. Complainant [REDACTED] found the notice on the ground in front of the subject property.
40. The notice, entitled, "Neighborhood Alert", stated the following:

The purpose of this notice is to inform you of a situation that has negatively impacted our community. Last year, a Waterside homeowner converted his home to a managed care facility (i.e. "Group Home") for developmentally disabled individuals:

(<http://www.waiverweb.com/A Loving Heart Subject property.html>)

The former resident has leased the property as a corporation to himself in order to run this business out of his home located at 16497 NW 15th Street. This action has resulted in a steady flood of community buses transporting employees/patients to and from the home and various visitors whose vehicles routinely congest the street and block the sidewalk. The constant influx of strangers, random tenants, and increased vehicle traffic to our community poses several safety and security concerns, and diminishes the value of our community.

We rely on the Waterside Homeowners Association (HOA) to enforce rules and standards that help maintain a safe and vibrant community and preserve property values (which in this economic climate is more critical than ever). While this homeowner is in violation of several association by-laws, it is uncertain how or if the HOA will pursue this matter through legal channels.

As a community, if we fail to gain a full legal resolution on this issue and allow this business to continue, it may result in unfavorable precedent being set - opening the door for similar business (e.g. troubled youth/assisted living facilities, methadone clinics etc.) or other businesses in general to be established in the neighborhood, further deteriorating the entire community.

Don't let this happen. The HOA needs your involvement and to hear from all residents who share these concerns. Plan on attending the next board meeting (look for signs posting date/time) or contact Bruce Boro at Miami Management Company: 954-846-1357, bboro@miamimanagement.com.

41. On or around April 13, 2010, Respondent Waterside HOA served Complainant A Loving Heart with a Notice of Pre-Suit Mediation. Subsection 720.311 of the Florida Statutes required that Respondent Waterside HOA attempt to resolve through mediation its dispute with Complainant A Loving Heart before Respondent Waterside HOA could file a lawsuit in state court to enforce its covenants.
42. During a mediation session held on May 6, 2010, Complainant [REDACTED] agreed to submit all required forms to Respondent Waterside HOA to obtain its approval of the fire suppression system and the rental of the subject property. Respondent Waterside HOA agreed to approve or disapprove Complainant [REDACTED] accommodation requests within thirty (30) days or advise Complainant Jose Cordero of any deficiencies or the need for additional information.
43. Generally, Respondent Waterside HOA requires that each prospective tenant submit a completed application packet for review. The application packet is distributed and collected by Respondent Miami Management and includes the following documents: an explanation of the screening procedures; an application for occupancy; an authorization to release confidential information to third parties for screening; an acknowledgement of receipt of rules and regulations of Waterside Subdivision; and a pet registration form.
44. In addition to the completed application packet, Respondent Waterside HOA also requires that prospective tenants submit a refundable check in the amount of \$500.00 made payable to Respondent Waterside HOA for a security deposit; a non-refundable check in the amount of \$100.00 made payable to Respondent Waterside HOA, for each individual/applicant over the age of 18 years old as an application fee; a check in

the amount of \$25.00 made payable to Respondent Miami Management for a processing fee; a photocopy of identification for all occupants, proof of employment, copy of the latest bank statement, a copy of social security card, and a copy of the signed lease agreement. Respondent Waterside HOA advised that applications are denied if the applicant has a criminal background or poor credit history.

45. On or around May 7, 2010, Complainant [REDACTED] sent a completed Request for Architectural Modification form to Respondent Waterside HOA for its approval of the fire suppression system.
46. On or around May 20, 2010, Complainant [REDACTED] submitted a completed application packet on behalf of Complainant A Loving Heart to Respondent Miami Management. In addition to the completed application packet, Complainant [REDACTED] submitted a check in the amount of \$600.00 made payable to Respondent Waterside HOA. The check included a \$500.00 security deposit and a \$100.00 application fee. Complainant [REDACTED] also submitted a check in the amount of \$25.00 made payable to Respondent Miami Management for the processing fee.
47. In a letter dated June 22, 2010, Respondent Waterside HOA requested that Complainant [REDACTED] provide additional documentation regarding the fire suppression system, and an application and application fee for each of the Resident Complainants.
48. On July 15, 2010, Complainant [REDACTED] submitted a separate application for each of the six (6) Resident Complainants, and a check in the amount of \$600.00 made payable to Respondent Waterside HOA for the application fee of each of the Resident Complainants. Complainant [REDACTED] also submitted a copy of the lease between Complainants [REDACTED] and A Loving Heart.
49. In a letter dated July 20, 2010, Respondent Waterside HOA advised Complainant [REDACTED] that his Request for Architectural Modification and request to operate the subject property as a residence for individuals with disabilities were denied. Respondent Waterside HOA also advised that the applications submitted for Complainant A Loving Heart and the Resident Complainants were denied. Respondent Waterside HOA asserted that Complainant A Loving Heart was operating the subject property as a business in violation of the Waterside Declaration.
50. At all times relevant to the Charge, at least five (5) businesses listed mailing addresses with Waterside Subdivision as their principal place of business.
51. On or around October 27, 2010, Complainants [REDACTED] and A Loving Heart filed an action in the Circuit Court of Broward County, Florida against Respondents Waterside HOA, Miami Management and Boro, et al., alleging that they violated, *inter alia*, the Florida Fair Housing Act, Florida Statute §§ 760.20 et. seq.

52. Respondent Waterside HOA currently permits the Resident Complainants to continue to reside in the subject property. If the fire suppression system is removed pursuant to Respondent Waterside HOA's demand, the Resident Complainants will no longer be able to reside in the subject property. Additionally, if Complainant A Loving Heart ceases operations at the subject property pursuant to Respondent Waterside HOA's demand, the Resident Complainants will be denied the supportive services they need and will no longer be able to reside at the subject property.
53. As a result of Respondents Waterside HOA, Miami Management, and Boro's discriminatory acts, the Resident Complainants will lose a housing opportunity and suffer economic loss and emotional distress.
54. Respondents caused Complainants to suffer actual damages, including but not limited to, out-of-pocket expenses and emotional distress.

D. Legal Allegations

55. As described in paragraphs 23, 33-35, 37-38, 43, 45, 47, 49-50, and 52, if Respondent Waterside HOA forces Complainant A Loving Heart to cease operations at the subject property and Complainant [REDACTED] to discontinue use of the fire suppression system, it will deny the Resident Complainants the supportive services and life-safety equipment they need to reside at the subject property, thus violating subsection 804(f)(1) of the Act by making housing unavailable to the Resident Complainants because of disability. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
56. As described in paragraphs 42-44, and 46-49, Respondent Waterside HOA violated subsection 804(f)(1) of the Act by refusing to rent because of disability when it denied the applications submitted on behalf of Complainant A Loving Heart and the Resident Complainants. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
57. As described in paragraphs 23, 34-35, 37-38, 45, 47, 49-50, and 52, by failing to reasonably accommodate Complainants by not permitting use of the fire suppression system, Respondent Waterside HOA will deny the Resident Complainants the supportive services and life-safety equipment they need to reside at the subject property, thus making housing unavailable, in violation of subsections 804(f)(1) and 804(f)(3)(B) of the Act because of disability. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
58. As described in paragraphs 34-35, 38, 49, 50, and 52, by failing to reasonably accommodate Complainants by not waiving the rule against businesses, Respondent Waterside HOA will deny the Resident Complainants the supportive services and life-safety equipment they need to reside at the subject property, thus making housing unavailable, in violation of subsections 804(f)(1) and 804(f)(3)(B) of the Act because of disability. 42 U.S.C. § 3604(f)(1); 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.202(a); and 24 C.F.R. § 100.202(b).

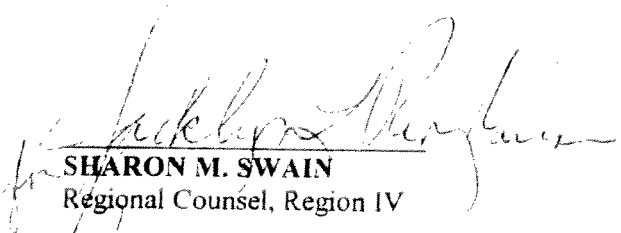
59. As described in paragraphs 23, 33-35, 37-38, 43, 45, 47, 49-50, and 52, Respondent Waterside HOA will violate subsection 804(f)(2) when it forces Complainant A Loving Heart to cease operations at the subject property and Complainant [REDACTED] to discontinue use of the fire suppression system. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
60. As described in paragraphs 21, 31-34, and 49, Respondents Waterside HOA, Boro, and Miami Management violated subsection 804(f)(2) by classifying the subject property as a business, rather than a single family home, because its residents are individuals with disabilities who require disability-related supportive services at their place of residence. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
61. As described in paragraphs 42-44, and 46-49, Respondent Waterside HOA, Boro, and Miami Management violated subsection 804(f)(2) by denying the applications submitted on behalf of Complainant A Loving Heart and the Resident Complainants thereby subjecting them to different terms and conditions because of disability. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
62. As described in paragraphs 23, 34-35, 37-38, 45, 47, 49-50, and 52, Respondent Waterside HOA violated subsections 804(f)(2) and 804(f)(3)(B) of the Act when it refused to grant Complainant [REDACTED]'s request for a reasonable accommodation to have the fire suppression system on the subject property which is necessary for the use and enjoyment of the subject property by the Resident Complainants. 42 U.S.C. § 3604(f)(2); 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.202(b); and 24 C.F.R. § 100.202(b).
63. As described in paragraphs 34-35, 38, 49, 50, and 52, Respondent Waterside HOA violated subsections 804(f)(2) and 804(f)(3)(B) of the Act when it refused Complainant [REDACTED]'s request for a reasonable accommodation from the rule against businesses because of disability. 42 U.S.C. § 3604(f)(2); 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.202(b); and 24 C.F.R. § 100.202(b).
64. At all times relevant to this Charge, Respondent Boro was employed by Respondent Miami Management and acted within his scope of employment or authority. Respondent Miami Management is vicariously liable for Respondent Boro's discriminatory acts.
65. At all times relevant to this Charge, Respondent Waterside HOA employed Respondent Miami Management to manage the daily operation of Waterside Subdivision. Respondent Waterside HOA is vicariously liable for Respondent Miami Management's discriminatory acts.

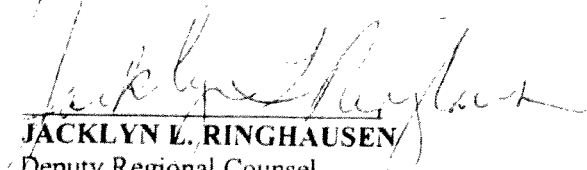
III. CONCLUSION


WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with violating the Act as described above, and prays that an order be issued that:

67. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act;
68. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating against any person because of disability in any aspect of the rental, sale, occupancy, use, enjoyment, or advertisement of a dwelling;
69. Awards such monetary damages as will fully compensate Complainants [REDACTED] A Loving Heart, [REDACTED] for their economic loss, including but not limited to, out-of-pocket expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, and any and all other damages caused by Respondents' discriminatory conduct in violation of the Act;
70. Assesses a civil penalty against each Respondent for each of its violations of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
71. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,


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